IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 414 of 1989

For Approval and Signature :

HONOURABLE MR.JUSTICE C.K.BUCH

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	
5	Whether it is to be circulated to the civil judge ?	

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MUKESH GOPALJI PARMAR - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR SUDHIR M MEHTA for Appellant(s) : 1,
MS DS PANDIT, LD.APP for Respondent-State.

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 12/03/2007

CAV JUDGMENT

1. The present appellant-orig.convict(hereinafter referred to as 'the appellant') has filed the present appeal under Section 374 read with Section 386 of the Code of Criminal Procedure, 1973 against the judgment and order of conviction and sentence dated 27th June 1989,

passed by the learned Special Judge, Ahmedabad City in Special Case No.11 of 1988, whereby the learned trial Judge at the conclusion of the trial vide judgment and order under challenge has held the appellant guilty for the said offences and sentenced him to undergo rigorous imprisonment for two years and a fine of Rs.1000/-, in default to undergo further rigorous imprisonment of six months for the offence punishable under Section 161 of the Indian Penal Code and also sentenced him to undergo rigorous imprisonment for two years and a fine of Rs.1000/- and in default to suffer further rigorous imprisonment for six months for the offence punishable under Section 5(1)(d) read with 5(2) of the Act. Both the sentences were ordered to be run concurrently.

2. The judgment and order of conviction and sentence under challenge in this appeal is assailed by the appellant on various grounds as mentioned in paragraph no.3 of the memo of the appeal. Shri Sudhir Mehta, learned counsel appearing for the appellant, has taken me

through all the grounds of challenge and also the judgment and order of conviction and sentence under challenge. By analysing the facts placed by the prosecution and evidence led during the course of trial, it is submitted by Shri Sudhir Mehta that the finding recorded by the learned trial Judge is mainly based on conjectures and surmises and it was required to be held by the learned trial Judge that as the complainant and all other residents of Lalbhai Fakirbhai Chawl were inclined to get rid of the entire assessment process initiated by the appellant, the complainant decided to implicate the appellant in such a serious offence. There was no demand of bribe amount by the appellant on 25th February, 1987 or any time thereafter as alleged by the prosecution. There is no convincing evidence as to demand of bribe amount. The complainant has not supported the case of the prosecution and, therefore, he was treated hostile by the prosecution by way of order below application Ex.13. The learned trial Judge ought not to have linked the appellant with the crime on the sole testimony

of panch and the panchnama tendered in evidence. The evidence of the raiding officer ought not to have any weightage as he was the trap witness. The learned trial Judge committed a grave error in seeking corroboration from the evidence of raiding party officer and accepting the evidence of the panch witness.

3. Ms.D.S. Pandit, learned Additional Public Prosecutor, has submitted that the reasons assigned by the learned trial Judge for linking the appellant with the crime are cogent. The learned trial Judge has categorically held that the defence theory of planting the amount of bribe forcibly in the pocket of the appellant, was not found acceptable. It is true that the prosecution should prove its case beyond reasonable doubt and it cannot rely on the weakness of the defence. But in the present case, according to Ms.Pandit, the Court should evaluate the evidence in the background of the statement of the appellant recorded under Section 313 of the Code of Criminal Procedure, 1973. The

evidence of panch witness has been accepted because the scientific data collected with the help of ultraviolet lamp corroborates the version and evidence of the trap witness ACB (Anti Corruption Bureau) Police Inspector should not be discarded. The accepted proposition of law is that the evidence of the trap witness like the complainant and the trapping officer should be scanned closely. This is not a case of any material contradiction or improvement in the version of the basic story. Though the complainant has not supported the case of the prosecution, some part of his evidence clearly helps the prosecution. Part of hostile witness can be read, if it is useful to either party. In the present case, the acceptance of amount of bribe has been clearly supported by the case of the prosecution, the finding recorded by the learned trial Judge cannot be said to be illegal, erroneous or in any way perverse or contrary to law.

4. Of course, various factual aspects have been placed by Shri Sudhir Mehta before this Court

and his arguments can be considered while commenting on the finding recorded by the learned trial Judge. But firstly it would be appropriate at this stage to state the basic story which was placed by the prosecution before the learned trial Judge as under :

(i) The case of the prosecution in nutshell is that the complainant was occupying a portion of the premises which is originally owned by the Ahmedabad Municipal Corporation, known as Lalbhai Fakirbhai's Chawl. The complainant was a tenant and occupying a big room, and was using the same as residential premises and, thereafter, he had divided that room into two separate portions, by leaving a gap in the wall. There was no door in the said gap. So technically it was an intentional division. The complainant being an occupant of the premises was entitled to keep the things in any part of the room. A part of the room was being used as his residence and he was also keeping some material

related to his business. He was dealing in selling the empty gunny bags. The other part of the room was given on rent to one Bhikhabhai at the rate of Rs.100/- per month. In the entire property known as Lalbhai Fakirbhai's Chawl, there were about 100 rooms and the complainant was occupying one of such rooms and the portion of such room was given to Bhikhabhai. The chawl was named as Noorbhai Dhobi's chawl in the Gomtipur area of Ahmedabad City and within the limits of Ahmedabad Municipal Corporation. The premises bearing Tenement No.4331–0011–00–0102-F bearing Census No.10/A and Survey No.154/89 was originally owned by one Lalbhai Fakirbhai, which was later on purchased by one Jebalbhai Rabari. The occupation and possession of that portion was thereafter taken by the complainant. Tenancy rights were also purchased. The occupiers of the said premises were not paying taxes to the Ahmedabad Municipal Corporation. Even the owner of the

property was not paying the Municipal Taxes. The property was auctioned to recover the Municipal taxes and since then the Ahmedabad Municipal Corporation had become the owner of the said premises. The complainant was the owner of the superstructure having purchased from Jebalbhai Rabari and used to pay Rs.6/- towards rent to the Ahmedabad Municipal Corporation. The premises of the complainant was admeasuring 22' X 44' (feet). Though the Estate Department of the Ahmedabad Municipal Corporation was receiving the amount of Rs.6/- as rent, the complainant as the owner of the separate portion was getting the rent of Rs.100/- from the said Bhikhabhai Shah. It is not a matter of dispute that the Ahmedabad Municipal Corporation had issued a notice to the complainant.

(ii) On 04th February, 1987, the appellant visited the premises of the complainant and found that the complainant had

unauthorisedly let out the premises and thereby, had started earning rent and, therefore, the property shall have to be measured. The appellant took the measurement of the premises and informed the complainant that as he has rented the said premises, he will be required to pay an amount of Rs.7,000/- towards tax. The complainant was issued one requisition and the appellant had told the complainant to see him on the next day in the office of the appellant. The complainant did not pay any amount and, therefore, again on 07th February, 1987, the appellant had allegedly visited the premises of the complainant in the company of his superior Shri Palabhai Vankar, Superintendent of the Tax Department of the Ahmedabad Municipal Corporation. The complainant was not present. The said Shri Palabhai in absence of the complainant cross-checked the measurement taken by the appellant and both of them i.e. appellant and Shri Palabhai, had left the place. But the

appellant had given one chit i.e. Article No.8 to Bhikhabhai, and the complainant was in turn asked to see the appellant or his superior in his office. Despite this written instructions in the form of a Chit, the complainant did not appear either before the said Shri Palabhai or the appellant. The appellant was an outdoor clerk in the Tax Department of the Ahmedabad Municipal Corporation.

(iii) The said area was falling under the jurisdiction of the appellant and the appellant visited the premises of the complainant again at about 11-30 a.m. on 25th February, 1987. He informed PW-2 Bhikhabhai, tenant of the PW-1 complainant, that the appellant would come at about 04-00 p.m. on the very same day and he was asked to inform the complainant to remain present. The complainant when reached to his shop-cum-residence at about 02-00 p.m., he was informed by the said Bhikhabhai that

the appellant had come and had informed that he will come again at about 04-00 p.m. and the complainant was asked to remain present by the said Bhikhabhai as per the intimation. On that day at about 04-30 p.m., the appellant came on a scooter and met the complainant and at that time, the said PW-2 Bhikhabhai was also present. In presence of the said Bhikhabhai, the appellant started hackling the complainant and the complainant was also fired as to why he did not visit the office of the appellant though informed twice earlier. The appellant also stated that he will take necessary action for assessment of the premises which is Rs.7000/- per annum and the complainant will be harassed. The complainant, therefore, explained the position. It is the say of the prosecution that the complainant informed the appellant that he is a poor man and was not aware about the seriousness of the matter and he will not be able to pay this much of amount,

if assessed, and he will be required to sell away his shop-cum-residence. So the appellant should be kind to him. It is alleged that in response thereof, the appellant told the complainant to settle the matter and for that the complainant should agree to some practical methods. On asking that what would be that practical method, the appellant told the complainant in a laughing tone to pay Rs.5000/-. If the complainant pays so, the appellant will dispose of everything and he would see that the assessment is made at an old rate.

(iv) According to the prosecution, the complainant thereafter informed the appellant about recession in the business, etc. and after disputations, the appellant had agreed to accept Rs.1000/- from the complainant. The appellant immediately asked for that amount, is the say of the prosecution, but as the complainant was not able to pay the amount immediately, the

complainant promised that he will pay the said amount on Friday, 27th February, 1987. The appellant accepted the proposal and agreed to accept the amount on Friday and told him that he will come on Friday i.e. on 27th February, 1987, at about 02-00 p.m. at the shop of the complainant and the complainant was asked to keep the amount ready, otherwise the appellant will run away and the complainant will have to pay the tax which will be assessed by the appellant. The complainant at that time told the appellant that he will arrange for money anyhow. Thereafter, the appellant had gone. It is further the say of the prosecution that the complainant had no intention to pay the amount and, therefore, he approached the office of the ACB, Shahibaugh at Ahmedabad and narrated the facts. Thereafter, his complaint was recorded by Police Inspector Shri K.R. Jadav. Shri Jadav arranged for trap on 27th February, 1987 by calling two panchas

after completing the formalities. For the success of trap, anthracene powder was applied on the bribe amount of Rs.1000/- which was tendered by the complainant to Police Inspector Shri Jadav, and these currency notes smeared with anthracene powder were given to the complainant and therefore, on demand, the same can be given to the appellant the appellant can be trapped.

(v) The complainant in the company of panch no.1, as per the trap arranged by Police Inspector Shri Jadav and the details mentioned in the first part of panchnama, reached his shop. The appellant was sitting in the shop waiting for the complainant. On entering into the shop, the complainant welcomed the appellant. At that time, the appellant told the complainant, “I have been waiting here for you for half an hour.” When the complainant and panch no.1 reached to the shop, PW-Shri Bharucha was sitting in an iron chair

besides the appellant. When the appellant told the complainant that he has been waiting for half an hour, the complainant told him, “Sir, I am a poor man, I do not know anything in the matter of tax”. The appellant, therefore, told him that “give me Rs.1000/- as agreed earlier”. The complainant, therefore, gave the muddamal currency notes smeared with anthracene powder with his right hand which were kept in the pocket of the shirt. The appellant at that time told Shri Bharucha to take and count the same. Therefore, the complainant gave those currency notes to Shri Bharucha. Shri Bharucha offered these currency notes to the appellant saying that, “it is complete. Sir, you may count it.” The appellant thereafter counted those currency notes on accepting the same with the right hand and after folding those currency notes pocketed the same in his left side pocket of terry cotton shirt. As decided earlier, the signal

was given to the Members of the raiding party by the complainant who had arranged themselves outside the premises and they advanced by following the complainant and the panch no.1, and the appellant was caught. The trapping officer Shri Jadav after introducing him, verified the acceptance of the muddamal currency notes by the appellant in presence of panchas and after completing the formalities with the help of ultraviolet lamp drew second part of panchnama. After investigation, such evidence was found sufficient against the appellant, the Investigating Officer submitted chargesheet after obtaining necessary sanction to prosecute from the competent authority.

5. The learned trial Judge framed the charge against the appellant herein on 06th February, 1989 and to bring home the charge, the prosecution has examined the following witnesses :

1. Shri Maganbhai Dhananbhai Vaghela, PW-1, Ex.9
2. Shri Bhikhabhai Manilal Shah, PW-2, Ex.40
3. Shri Narendrasinh Harisinh Gohil, Panch no.1, PW-3, Ex.15
4. Mahmadhanif Abdulkarim Bharucha, PW-4, Ex.18
5. Kanchanlal Ratilal Jadav, Trapping Officer, Police Inspector ACB, PW-5, Ex.19

6. Over and above the oral evidence of these prosecution witnesses, the learned trial Judge has appreciated the documents seized during the course of trial, as well as the panchnama proved and tendered in evidence, also the FIR i.e. complaint Ex.10. Of course, the defence-side has attempted to claim that the complainant was served with a bill or any type of demand prior to lodging the complaint, but it is found incorrect. The muddamal Article Nos.7 and 8, which are requisition forms and direction issued by the Divisional Superintendent (Tax) asking details of the

property which was to be assessed respectively. So as such there was no assessment or demand but the same was under contemplation. The learned trial Judge has appreciated all these documents and I have also closely scrutinized these evidence along with the order as Shri Sudhir Mehta, learned counsel appearing for the appellant, has taken me through the entire set of evidence. The prosecution has proved the following aspects beyond reasonable doubt :

(i) The initial demand of Rs.5000/- and then its reduction to Rs.1000/- after disputations. On this aspect, the learned trial Judge has considered the version not only of the complainant but also of PW-2 Bhikhabhai. The oral version of these two witnesses gets corroboration from the complaint lodged by PW-1 complainant. It is true that PW-2 Bhikhabhai may have some interest in tax assessment but it is difficult for this Court to say that PW-2 Bhikhabhai is also a trap witness. His status was

not of an accomplice. As per the settled legal position, the evidence of the complainant was required to be scrutinized as the evidence of an accomplice and, therefore, it indeed required some corroboration. The PW-2 Shri Bhikhabhai and PW-4 Shri Bharucha amply corroborates the say of the prosecution that actual demand of bribe amount by the appellant was for Rs.1000/- on the date of the complaint. The appellant has agreed to accept the amount of Rs.1000/- with assurance that he shall help the complainant in hushing up the proceedings. It appears that to extort money from the complainant, the appellant attempted to use one another employee i.e. Shri Palabhai, Superintendent in the Tax Department of the Ahmedabad Municipal Corporation. This person namely Shri Palabhai, has not been examined by the prosecution but I do not find this as a lacuna. It is not the case of the prosecution that on 07th February, 1987, when Shri Palabhai

had visited the premises of the complainant with appellant, anybody had demanded amount or had expressed any intention to have illegal gratification from the complainant or the said Shri Bhikhabhai by tempting them to get rid of the tax net.

(ii) First part of panchnama has been proved by the complainant; Shri Jadav who is the trapping officer and PW-3 Panch no.1. There is no confusion or contradiction as to the use of currency notes in the procedure adopted by the trapping officer in applying the anthracene powder on the currency notes worth Rs.1000/- and it is also proved by this witness consistently and without material contradiction or any improvement which can be considered as contradiction so far as the first part of panchnama is concerned. It is settled that the witnesses are not supposed to narrate the details parrotlike. Substantively they have said some thing.

The proof as to the first part of panchnama has some relevance because the strength in the evidence qua the first part of panchnama is very relevant to appreciate the second part of panchnama. The learned trial Judge in paragraph no.7 of the judgment has discussed these details. Of course, panch no.2 has not been examined but the complainant, panch no.1 and the trapping officer Shri Jadav, have stated that the details as to the role assigned to both the panchas. The muddamal currency notes were 10 in number, each of denomination of Rs.100/- and these notes were recovered in presence of panchas and prosecution witnesses including the complainant from the pocket of the appellant. From the nature of the cross-examination of these witnesses and the replies given by the appellant in the further statement and also in the written defence statement, it is easy to infer that the basic defence of the appellant is of denial and the other

part of defence is that when he went to the shop of the appellant on 27th February, 1987, the complainant with the assistance of PW-4 Shri Bharucha, thrust the muddamal currency notes in his pocket and as the currency notes were inserted in the pocket of the appellant forcibly and against the wish and will of the appellant, some parts of the currency notes were seen from outside, when the raiding officer reached the spot on receipt of the signal. It was decided that immediately on acceptance of the bribe amount by the appellant, the complainant was to order tea and the very signal was given.

(iii) The complainant of course had not visited the office of the Ahmedabad Municipal Corporation though intimated by the appellant on 04th February and 07th February, and he has stated that he was not inclined to pay any amount as bribe amount. But it emerges that the amount demanded as bribe being very high, he

was not inclined to pay and, therefore, decided to file the complaint. PW-4 Shri Bharucha, PW-2 Shri Bhikhabhai-tenant and other residents of the said Chawl may have supported the complainant but I do not find anything wrong if any kind of support is given by these persons including the PW-4 Shri Bharucha because it is in evidence that none of the residents of the entire chawl was assessed being the chawl under the ownership of the Ahmedabad Municipal Corporation itself. No example has been produced by the appellant showing any document that any other resident of the chawl was assessed for Municipal Property Tax. Ultimately, the appellant was the owner of the superstructure. Merely because the Municipal Corporation could have initiated other legal steps against the appellant on account of division of the property and/or as the complainant had rented a portion of the premises, so the learned trial Judge has rightly not accepted the argument that

the evidence of PW-2 Shri Bhikhabhai as well as complainant should not be treated as reliable piece of evidence.

(iv) The learned trial Judge at the time of evaluating the evidence had raised about six crucial questions and the same have been answered factually in the totality of the evidence.

(v) It appears from the document at Ex.20 that there was arrears of Rs.4416.17 ps. towards tax amount in respect of the premises of the complainant. So it is inferable that the property was measured earlier and the same was subjected to property tax assessment. It also transpires that many of the occupants practically of all the premises in the said Lalbhai Fakirbhai's Chawl were not paying tax and they were paying rent of the premises to the Ahmedabad Municipal Corporation. So there was no need to create drama or scene of measurement by the appellant. The net measurement of

the property must be available with the Ahmedabad Municipal Corporation and I presume even along with the map. So the visit of the appellant frequently i.e. on 04th and 07th February, 1987, once with Superintendent Shri Palabhai Vankar, does not appear to be bona fide visit, otherwise he would have attempted to measure the other rooms in the area of the entire chawl. Neither the appellant nor PW-Bhikhabhai had tried to keep curtain on the fact of tenancy of PW-Bhikhabhai nor as to the amount of monthly rent which was being paid by Shri Bhikhabhai to the complainant. Transparency shown by these two witnesses makes them more reliable. In stricto senso the chit Ex.8 is neither a notice nor an assessment order. So the gap to hush up the entire process was opened by the appellant. The complainant was not present on 07th February, 1987, is not a matter of dispute and the article no.7 simply says that the incumbent should give specific details

which is necessary evidence to arrive at an appropriate assessment. If the complainant had filed any proceedings before the Court, the Assessment Officer was statutorily authorized to assess the property keeping in mind the facts told by Shri Bhikhabhai to appellant and cross-checked by Shri Palabhai. The appellant was clear in his mind that the complainant is the owner or occupant of the premises who had given the portion of his room to PW-2 Bhikhabhai. The complainant as well as PW-2 Bhikhabhai were dealing in the same business of empty gunny bags. They had employed one person and he was helping them, and thereby they were selling those bags in the market by adding a nominal amount as their profit. If such small business persons are asked to pay the property tax of Rs.7,000/- per annum, they may immediately take even an oral intimation of such tax, as threat; and the learned trial Judge has evaluated the evidence in the background of the manner and

method of assessment of tax proposed and contemplated by the complainant. Any property owner or occupant in such a situation would try to get reduced the tax liability and for this if any strength or efforts are made, would not make such independent like the complainant an dependent individual.

7. Here in the present case, the prosecution was able to lead evidence of two other witnesses i.e. PW-2 Shri Bhikhabhai and PW-4 Shri Bharucha. Normally in ACB cases, (i) the bribe giver, (ii) the shadow i.e. panch no.1, an independent person deployed by trapping officer, and (iii) the trapping officer are the main witnesses. Such witnesses are normally being examined by the prosecution to prove the other legal aspects relevant to the facts of the prosecution. In ACB trap cases, the prosecution if has pleaded the demand of bribe, the requirement is to lead independent convincing evidence as to the demand of bribe vis-a-vis other cogent reliable evidence of demand of bribe made immediately prior to

acceptance of bribe amount or illegal gratification, and so also, the element of agreement either express or hidden at the time of acceptance of bribe amount. The learned trial Judge has considered these aspects with detailed discussion in paragraph nos.18 to 26 of the judgment and order under challenge. Though the complainant has turned hostile and he has been treated as hostile, he appears to be a person of very weak intelligent quotient (I.Q.) and a person unable perhaps to the question asked and the answers given by him. It is experienced that some times the atmosphere of the Court makes a person perplexed. As the complainant, of course, has turned hostile, it was difficult for the learned trial Judge to treat him as a condemnable witness and in that background, the learned trial Judge has placed reliance on the evidence of PW-2-Bhikhabhai Ex.14 and has held that the version of PW-2 Bhikhabhai is sufficient to prove the initial demand and demand immediately prior to acceptance of bribe amount. The PW-4 Shri Bharucha has satisfactorily corroborated PW-2 Bhikhabhai.

The reference of conversation which had taken place between the appellant and the complainant (page no.211 of the paper-book) and as to the conversation with Shri Jadav, trapping officer, after his arrival in the room after passing of bribe amount from the complainant to the appellant, is also found proved by consistency in the evidence of Shri Jadav-trapping officer, PW-4 Shri Bharucha and PW-2 Shri Bhikhabhai.

8. Thus, the prosecution, in the present case, has proved the acceptance of the muddamal currency notes by the appellant as bribe money and they were found in the pocket of the appellant. The hands of the appellant were found stained with anthracene powder. There is no contradiction or inconsistency that the currency notes were recovered from the pocket of the appellant and its description mentioned in the first part of panchnama. The conduct of the appellant also goes against him. There is no reason for the appellant to go to the residence-cum-shop of the complainant in advance and to wait for him at the said place.

The appellant could have left the premises being a person having some authority under the statute and could have assessed the property as per the established norms of the Ahmedabad Municipal Corporation, but the act of keeping himself present till arrival of the complainant is a guilty conduct. It appears that the appellant was waiting to see that the complainant comes and pays an amount of Rs.1000/- as agreed. It is not possible for this Court to make any comment qua the selection of panchas. Ex.20 is a form which simply shows the arrears of property tax. The property tax including the water tax was being assessed at Rs.60/- per annum. The previous arrears is shown as Rs.4456-17 ps. So it is not possible for this Court to accept the defence that as the complainant was fasten with the liability of the property tax, he has attempted to trap the appellant. The contradictions which have been proved in paragraph no.20 of the deposition of Shri Jadav, trapping officer, are minor contradictions and any of these contradictions

is not able to make any evidence or prosecution case doubtful.

9. It is rightly argued by Ms. D.S. Pandit, learned Additional Public Prosecutor, that the theory of forcible planting is not acceptable in view of the evidence as well as the conduct of the appellant. Very small portion of the currency notes was seen from outside of the pocket, and if it was a case of forcible planting, then the anthracene powder stains could have been noticed at various places of the clothes of the appellant, and even on both the sides of the hands i.e. palm and on the back portion.

10. When it is found that the prosecution has satisfactorily proved the acceptance of amount of bribe, the presumption under Section 4 of the Act can be raised and it is rightly raised by the learned trial Judge. It is also necessary to observe that the appellant has failed in rebutting the presumption. It is true that the appellant is permitted to take more than one defence and a defence may be

inconsistent to other one, but in ACB trap cases, if the accused takes a plea of forcible planting of bribe amount, he cannot legally rebut the presumption that the amount was accepted legitimately or against the tax dues. The appellant was not autohrised to collect the revenue or tax. So this type of argument would not help the appellant. As discussed earlier, the failure on the part of the appellant in the Tax Department in making ex-parte assessment of the tax, though the complainant was not paying any heed to the written intimation given to the complainant, therefore, becomes relevant vis-a-vis the conduct of the appellant of waiting for the complainant on the day on which he was trapped. One thing should not lost sight of that the appellant and PW-2 Bhikhabhai were dealing in the same business and as such there was no compartment type wall between the portions used by the complainant and PW-2 Bhikhkabhai. It has come in evidence that one open gap was left in between, so that both of them were able to move in the entire room while repairing the old gunny bags. In such a

situation, it was easy for the appellant to apply the actual assessment and the amount can be determined showing only premises. This addition also helps the prosecution.

11. The lacunas pointed out by Shri Sudhir Mehta left by prosecution of not examining Shri Palabhai, Superintendent of Tax Department of Ahmedabad Municipal Corporation or Peon of PW-2 Shri Bhikhabhai are not found valid and capable of disturbing the strength of the case of the prosecution. So mainly adopting the reasons assigned by the learned trial Judge and in view of above observations and discussion, I am inclined to dismiss this appeal, so far as the judgment and order of conviction under challenge is concerned.

12. It is the alternative submission made by Shri Sudhir Mehta, learned counsel appearing for the appellant, that the learned trial Judge has imposed rigorous imprisonment for two years for each offence. The finding of the learned trial Judge is mainly based on the

criminal misconduct of the appellant. There is no prescribed minimum punishment either under Section 161 of the Indian Penal Code or under Section 5(1)(d) read with 5(2) of the Act qua the nature of offence which is not proved against the appellant. Ultimately, on conviction, the Government employee loses each and every benefit and privilege which is available to a Government employee and he would be terminated from the service. It is observed by the Apex Court in various decisions that termination of a Government employee would be a civic death. In such a situation, the period of sentence should be very relevant, especially when there is no minimum punishment prescribed under the law. The learned trial Judge ought to have awarded some lesser punishment. At least this Court should show some leniency. The appellant was on bail throughout the trial. He was on bail pending trial and he was of about 30 years of age at the time of incident. So after a lapse of about 30 years, he must have reached the

age of 60 years. It is rightly submitted that the appellant may be playing with his grand-children. At this time, if he is asked to go to jail for two years, it would be too harsh and torturous for the family members of the appellant, who were not there on the day on which the appellant was trapped. In such a situation, the Court should impose lighter punishment, if possible by increasing the amount of fine. While quantifying the punishment and mainly the substantive sentence, the Court should see that it carries the effective message in the society and the punishment of a period of six months would be adequate. The appellant was trapped while accepting the bribe amount of Rs.1000/- and he has paid the amount of Rs.2000/- towards fine. The Court finds that the amount of fine imposed by the learned trial Judge cannot be said to be inadequate because Rs.2000/- had its value in the year 1988-89, so the Court is of the view that there should be reduction in the substantive period of sentence and

therefore, the same is required to be reduced to six month.

13. In view of above observations and discussion, the present appeal is hereby partly allowed. The judgment and order of conviction dated 27th June, 1989, passed by the learned Special Judge, Ahmedabad City, in Special Case No.11 of 1988, is hereby confirmed; and the judgment and order of sentence dated 27th June, 1989, passed by the learned Special Judge, Ahmedabad City, in Special Case No.11 of 1988, is hereby reduced and modified to the extent that instead of rigorous imprisonment for two years for the offence punishable under Section 161 of the Indian Penal Code, the appellant shall now undergo rigorous imprisonment for six months. Similarly so far as the offence punishable under Section 5(2) of the Prevention of Corruption Act, 1947 is concerned, instead of rigorous imprisonment for two years, the appellant now shall undergo rigorous imprisonment for six months. As the appellant has already paid the amount of fine,

the order of sentence qua fine has remained unaltered so far as both the aforesaid offences are concerned. The substantive sentence is hereby ordered to run concurrently.

14. As the appellant is enjoying bail since beginning of the trial, he should be given some reasonable time to surrender and, therefore, the appellant is directed to surrender himself within a period of 6 (six) weeks from today to serve the sentence, failing which the learned trial Court shall issue a non-bailable warrant against the appellant to secure the custody of the appellant so that he can be sent to jail for serving the sentence. The bail bond of the appellant shall stand cancelled.

(C.K. Buch, J)

Aakar